

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MADHU JAIN,	)	C.A. No. 05 11267 MEL
PLAINTIFF	)	
v.	)	
A CAPE ANN WHALE	)	
WATCH, INC.	)	
DEFENDANT	)	
	)	

**PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE WINKLER TESTIMONY  
RELATIVE TO HIS MEDICAL RECORD REVIEW**

Now comes the plaintiff and respectfully moves in limine to exclude Dr. Winkler's medical record opinion testimony that draws medical conclusions from medical records instead of from an actual medical examination by the doctor..

Plaintiff willingly flew to the U.S. and submitted herself to two examinations by defendant's chosen doctors. The defendant has withheld the results of one of these I.M.E. exams. It is unfair to withhold a medical report of an actual examination and submit instead a third doctor's medical record review based opinion.

Ms. Jain was willing and able to appear and be examined by any doctors selected by defendant. Despite this, Dr. Winkler has never examined her. At an actual exam, Dr. Winkler could have taken a history and examined the patient.

Since an examination was not performed it is much more difficult to medically argue about the patients health because the record review is solely based on third party information. This report's findings are not based on the doctor's perceptions but instead on his assumptions.

Further Dr. Winkler's conclusion that he cannot exclude the possibility that the plaintiff fainted is not probative relative to any material fact and his methodology (no patient contact) in determining the cause of the fall is not generally accepted in the medical community.

WHEREFORE, the plaintiff respectfully moves in limine to exclude the defendant's witness from testifying on his conclusions in the trial of this matter.

By the Plaintiff,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each party and any party appearing pro se by ~~first class mail, postage prepaid or by hand delivery~~ fax  
Dated 6/1/07 JMC -  
